

J. David Black
Member
Admitted in SC

October 4, 2010

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

RE: Implementation of Section 224 of the Act, WC Docket No. 07-245;
GN Docket No. 09-51

Dear Ms. Dortch:

Please accept this letter from the Electric Cooperatives of South Carolina (ECSC) submitting its comments in response to the Federal Communications Commission's (FCC or the Commission) July 15, 2010, Order and Further Notice of Proposed Rulemaking (NPRM) regarding the Implementation of Section 224 of the Communications Act (the Act) and also endorsing the comments submitted by the National Rural Electric Cooperative Association (NRECA) regarding the same.

The Electric Cooperatives of South Carolina, Inc. (ECSC), is the statewide service and trade association for electric cooperatives in the state. Our members are 18 consumer-owned electric cooperatives, three wholesale power supply cooperatives and one materials supply cooperative. Together, they operate the

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largest electric distribution system in the state. More than 1.4 million South Carolinians in all 46 counties use electricity from electric cooperatives.

The ECSC is very interested in the NPRM. While the Act currently exempts electric cooperatives from FCC pole attachment jurisdiction, any changes the FCC makes to its regulations may impact electric cooperatives in the event the current exemption is removed. Further, the FCC's regulations tend to set "standards" that impact pole attachment negotiations between electric cooperatives and the entities that make attachments to its poles.

KEY POINTS & CONCERNS

Below are a few of the key points and concerns that the ECSC wishes to bring to the attention of the FCC regarding its recent NPRM:

- **The desire to speed up broadband deployment through expedited make-ready procedures must be balanced against the need to ensure safe and reliable electric service.**

As NRECA argues, "The Commission's 'Need for Speed' make-ready proposals must be balanced with the need to ensure safe and reliable delivery of electric services." NRECA's comments describe the extent to which unauthorized attachments are problems faced by electric cooperatives nationwide, and for the ECSC, South Carolina in particular.

NRECA comments further describe troubling engineering practices used by attachers in their rush to deploy their lines and equipment. Such practices

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are not, as the NPRM suggests, overblown or overstated. These descriptions are consistent with what the South Carolina Electric Cooperatives regularly encounter and must devote significant time and resources to rectify.

In order to maintain the safety of the distribution system, South Carolina Cooperatives often have no other alternative than to file litigation to force pole attachers into compliance with the National Electric Safety Code (NESC). Such violations are significant, as they have the potential to seriously harm electric cooperative consumers as well as cooperative employees (See **Exhibit A**, Photographs documenting dangerous NESC pole attachment violations). FCC rules that deter such practices would be welcomed as setting a new de facto standard for attachers when they attach to cooperative poles.

ECSC is also concerned with a regulatory framework that could favor the use of contractors over cooperative employees. The 2010 NRECA nation-wide study of electric cooperatives found that 52% of electric cooperatives that experienced a negative impact on their system from the use of pole attachments cited improper construction as their reason. As NRECA pointed out in its formal comments to this agency, a regulatory framework that “[r]equir[es] utilities to accept that contractors perform the work can only exacerbate the problem.” The ECSC wholeheartedly supports this conclusion.

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The FCC must also remember that our first and foremost obligation is to our electric cooperative consumers. While we want broadband in all of our communities, we do not want to see the Commission adopt rules that could jeopardize the safety of our line workers or put the public in danger. Further, we hope the Commission decides not to impose greater administrative burdens, iron-clad timelines, and new requirements to address issues that are better left to private contracts involving regulated pole owners because attachers will come to expect us to act in the same manner. We simply do not have the same resources as larger, investor-owned utilities with which the Commission is more familiar, and any regulatory framework that has the potential to impose these burdens on the electric cooperatives of South Carolina would be misguided. Furthermore, some of the NPRM's proposals (such as a make-ready charge schedule and pole inventory database) are simply unnecessary and/or too burdensome.

- **Our cooperative business model requires that pole attachers must pay their own way.**

As noted in the 2010 NRECA nation-wide study of electric cooperatives, only 17% of electric cooperatives report using the FCC's rate formulas to determine pole attachment rental rates, while 47% report using an internally calculated formula. We believe that this is because the FCC formulas, which the

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NPRM proposes to modify to shift more costs to pole owners, do not align well with the cooperative business model. Tax exempt electric cooperatives must follow Internal Revenue Service cooperative principles to maintain their tax exemption. This means operating at cost. And the costs required to operate each South Carolina cooperative necessarily differs based upon its geographic location, its population density, and the percent break-down of residential and industrial consumers, just to name a few factors. Simply put, a one-size fits all approach to rate formula does not square with the cooperative model.

If a cooperative cannot recover the costs associated with providing pole attachments, then cooperative consumers will be forced to make up the difference. The NRECA's 2010 nation-wide survey found that "78% of the companies that lease co-op pole attachments use them to provide broadband Internet access to consumers [but] almost all (90%) indicate these companies do not provide broadband service to their entire service area, and are most likely excluding service to their rural areas." When the result of the proposed regulatory framework—electric cooperative consumers will be forced to make up the difference in cost of the attachments—is juxtaposed to the reality that these consumers may not want or even be offered services by the provider making the pole attachments the argument for such a regulatory framework falls apart.

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- **Lowering pole attachment rates will not help spur broadband deployment in rural and sparsely populated areas.**

Our first hand experience indicates that even very low pole attachment rates will not induce service providers to deploy broadband to our most difficult to serve, sparsely populated territories. It is well established that low population density is the most significant barrier to rural broadband deployment. Lowering the pole attachment rates will not change this. A reformed Universal Service Fund to accommodate broadband is the right mechanism to foster deployments to high-cost areas and make the economics work for providers to enter into and serve those areas.

CONCLUSION

The ECSC understands and supports the goals sought by the NPRM—universal broadband—but the NPRM’s pole attachment proposals would provide the wrong “solutions.”

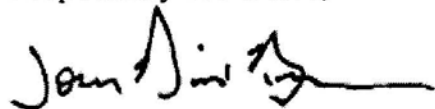
While it is beyond question that the purpose of the NPRM is well intended, much of what the NPRM proposes to do in this proceeding would set a new bar for electric cooperative pole attachment practices that could negatively impact our ability to provide safe and reliable electric service to our consumers and appropriately recover our pole attachment related costs. We urge the FCC to consider these comments and those of NRECA to more fairly balance the goal

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of speedier broadband deployment with the need to ensure the safety and reliability of our electric infrastructure and quality service to our consumers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. David Black", with a stylized flourish at the end.

J. David Black

JDB/hjr

Attachments

cc: Chris Koon, Vice President of Legal Affairs, ECSC